IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 596 of 2006

Date of Order: September 13, 2006

Babu Ram **.....Petitioner.**

VERSUS

Financial Commissioner and others **.....Respondents.**

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The Hon'ble Mr. Justice V.K. Gupta, Chief Justice.

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Petitioner: **Mr. Onkar Jairath, Advocate.**

For the Respondents : **Mr. M.S. Chandel, Advocate General, with Mr. J.K. Verma, Deputy Advocate General, for respondents No.1 and 2.**

Surjit Singh, Judge (Oral)

Heard.

The order passed by the Financial Commissioner on the recommendation of the Divisional Commissioner for the review of the mutation is innocuous. Initially, mutation was entered and attested in favour of the writ petitioner and other legal heirs of the deceased, regarding devolvement of his estate, in accordance with the rules of Succession. That was challenged by respondent No.3, by filing an appeal. Simultaneously, a suit has also been filed by him in the Civil Court, which is still pending. Respondent No.3 claims that the person whose succession is in question had made a Will in his favour. During the pendency of that suit, the Financial Commissioner is alleged to have passed a review order directing the revenue officer to

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Whether the reporters of the local papers may be allowed to see the Judgment?

sanction the mutation on the basis of the Will, because the same is a registered one. Undoubtedly, the mutation, which the revenue officer may now sanction on the basis of the review order passed by the Financial Commissioner, will be subject to the decision by the Civil Court. The legal position is quite well settled on this point.

The writ petitioner's counsel submits that if respondent No.3 withdraws his suit, which he has filed to claim the property on the basis of the Will, the writ petitioner will be doomed. We see no merit in this submission. In case the writ petitioner feels that respondent No.3 may withdraw the suit, he can himself file a suit claiming succession to the estate of the deceased person, in accordance with the rules of Succession and challenge the Will set up by respondent No.3. In case such a contingency arises and the writ petitioner files a suit, the same shall be decided on its merits and in accordance with the law and totally uninfluenced by any observation made in this order or the Financial Commissioner in her impugned order.

Writ Petition stands disposed of.

CMPs No.1001 & 1002 of 2006

Infructuous.

(V.K. Gupta), C.J.

September 13, 2006(sd) **(Surjit Singh), J.**